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An Act Containing the Recommendations of the Criminal Law Advisory Commission

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §3314, sub-§1, ¶E, as amended by PL 2005, c. 507, §10, is further amended to read:

E. The court may require the juvenile to make restitution for any damage to the victim or other authorized claimant as compensation for economic loss upon reasonable conditions that the court determines appropriate. For the purposes of this paragraph, ~~the definitions in Title 17A, section 1322 and the provisions of Title 17A, sections 1324, 1326B, 1326-E, 1328A and 1329~~chapter 54 apply, except that section 1329, ~~subsection 3, paragraph A~~ does not apply. Enforcement of restitution order is available pursuant to subsection 7. If the restitution was a condition of probation, the attorney for the State may with written consent of the juvenile community corrections officer, file a motion to revoke probation.

Sec. 2. 15 MRSA §3314, sub-§7, as amended by PL 2007, c. 536, §3, is further amended to read:

7. Enforcement of a dispositional order or order to appear. After notice and hearing and in accordance with the Maine Rules of Civil Procedure, Rule 66, the court may exercise its inherent contempt power by way of a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, to enforce the disposition ordered following an adjudication for a juvenile crime or to enforce any order requiring the appearance of a juvenile before the court. Any confinement imposed as a punitive or remedial sanction upon a person who has not attained 18 years of age may not exceed 30 days and must be served in a facility approved or operated by the Department of Corrections exclusively for juveniles. Any confinement imposed as a punitive or remedial sanction upon a person who has attained 18 years of age, if to be served in a facility approved or operated by the Department of Corrections exclusively for juveniles, may not exceed 30 days. To enforce the disposition ordered following an adjudication for a juvenile crime defined in section 3103, subsection 1, paragraph B or C upon a person who has not attained 18 years of age, the court shall, at the time of the disposition, provide written notice to the juvenile of the court's authority to enforce the dispositional order through an exercise of its inherent contempt power and that a contempt order could include an order of confinement for up to 30 days as a punitive sanction and for up to 30 days as a remedial sanction. Except as explicitly set out in this subsection, nothing in this subsection affects the court's ability to exercise its contempt powers for persons who have attained 18 years of age.

In addition to the contempt powers described in this subsection, upon a default in payment of a fine or restitution, execution may be levied and other measures authorized for the collection of unpaid civil judgments may be taken to collect the unpaid fine or restitution. A levy of execution does not discharge a juvenile confined as a punitive sanction and does not discharge a juvenile confined as a remedial sanction until the full amount of the fine or restitution has been paid.

Sec. 3. 17-A MRSA §283, sub-§3 is enacted to read:

3. For purposes of this section, any element of age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.

Sec. 4. 17-A MRSA §284, sub-§5 is enacted to read:

5. For purposes of this section, any element of age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.

Sec. 5. 17-A MRSA §756, as amended by PL 2009, c. 142, §4, is further amended to read:

§ 756. Aiding escape

1. A person is guilty of aiding escape if, with the intent to aid another person to violate section 755:

A. ~~The actor~~person conveys or attempts to convey to the other person any ~~contraband~~tool or other thing that may be used to facilitate a violation of section 755. Violation of this paragraph is a Class C crime;

A-1. ~~The actor~~person conveys or attempts to convey to the other person ~~contraband~~ that includes a dangerous weapon. Violation of this paragraph is a Class B crime;

B. ~~The actor~~person furnishes plans, information or other assistance to the other person. Violation of this paragraph is a Class C crime; or

C. ~~The actor~~person whose official duties include maintaining persons in official custody, as defined in section 755, subsection 3, permits such violation or an attempt at such violation. Violation of this paragraph is a Class C crime.

~~2. - As used in this section, "contraband" means a dangerous weapon, any tool or other thing that may be used to facilitate a violation of section 755, any thing that a person is prohibited by statute from making, possessing or trafficking in or a scheduled drug as defined in section 1101, subsection 11, unless the drug was validly prescribed to the person in official custody and was approved for use by the person pursuant to the procedures of the custodial agency.~~

4. A person may not be indicted or charged in an information with both a violation of this section and as an accomplice to a violation of section 755.

Sec. 6. 17-A MRSA §757, sub-§2, as repealed and replaced by PL 1977, c. 510, §65, is amended to read:

2. As used in this section, "official custody" has the same meaning as in section 755. As used in this section, "contraband" ~~has the same meaning as in section 756~~ means a dangerous weapon or anything that a person confined in official custody is prohibited by statute from making, possessing or trafficking in or a scheduled drug as defined in section 1101, subsection 11, unless the drug was validly prescribed to the person in official custody and was approved for use by the person pursuant to the procedures of the custodial agency.

Sec. 7. 17-A MRSA §1177 is enacted to read:

§ 1177. Certain communications by victims confidential

The following communications are privileged from disclosure:

1. Communications by a victim as described in Title 16, section 53A, subsection 2 to a sexual assault counselor as defined in Title 16, section 53A, subsection 1, paragraph B are privileged from disclosure as provided in Title 16, section 53A, subsection 2.

2. Communications by a victim as defined in Title 16, section 53B, subsection 1, paragraph B, to an advocate, as defined in Title 16, section 53B, subsection 1, paragraph A, are privileged from disclosure as provided in Title 16, section 53B, subsection 2.

3. Communications by a victim as defined in Title 16, section 53C, subsection 1, paragraph B, to a victim witness advocate or a victim witness coordinator, as defined in Title 16, section 53C, subsection 1, paragraph C, are privileged from disclosure as provided in Title 16, section 53C, subsection 2.

Sec. 8. 17-A MRSA §1202, sub-§1-A, ¶A, as repealed and replaced by PL 2003, c. 711, Pt. B, §14, is amended to read:

A. If the State pleads and proves that at the time of the crime the victim had not attained 12 years of age or, in the case of a crime under sections 283 and 284, the victim had not attained 12 years of age at the time the sexually explicit conduct occurred, the period of probation for a person convicted under chapter 11 or 12 may not exceed:

- (1) Eighteen years for a Class A crime;
- (2) Twelve years for a Class B crime; and
- (3) Six years for a Class C crime;

Sec. 9. 17-A MRSA §1204, sub-§2-A, ¶B, as repealed and replaced by PL 1977, c. 455, §2, is amended to read:

B. To make restitution pursuant to chapter 54 to each victim of ~~his~~the convicted person's crime, or to the county where the offense is prosecuted if the identity of the victim cannot be ascertained or if the victim voluntarily refuses the restitution. If the court orders as a condition of probation that the convicted person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution pursuant to chapter 54 as a sentencing alternative and no additional order in this regard is necessary.

Sec. 10. 17-A MRSA §1304, sub-§1-A is enacted to read:

1-A. For purposes of this section, if an offender is returned to court pursuant to a warrant, both the court located where the warrant is issued and the court located where the warrant is executed are authorized to conduct the default hearing pursuant to subsection 3.

Sec. 11. 17-A MRSA §1304, sub-§3, ¶A, as repealed and replaced by PL 2007, c. 517, §1, is amended to read:

A. Unless the offender shows by a preponderance of the evidence that the default was not attributable to an intentional or knowing refusal to obey the court's order or to a failure on the offender's part to make a good faith effort to obtain the funds required for the payment, the court shall find that the default was unexcused and may:

(1) Commit the offender to the custody of the sheriff until all or a specified part of the fine is paid. The length of confinement in a county jail for unexcused default must be specified in the court's order and may not exceed one day for every \$5 of unpaid fine or 6 months, whichever is shorter. An offender committed for nonpayment of a fine is given credit toward the payment of the fine for each day of confinement that the offender is in custody, at the rate specified in the court's order. The offender is also given credit for each day that the offender is detained as the result of an arrest warrant issued pursuant to this section. An offender is responsible for paying any fine remaining after receiving credit for confinement and detention. A default on the remaining fine is also governed by this section; or

(2) If the unexcused default relates to a fine imposed for a Class D or Class E crime, as authorized by chapter 53, order the offender to perform community service work, as authorized in chapter 54C, until all or a specified part of the fine is paid. The number of hours of community service work must be specified in the court's order and may not exceed 8 hours for every \$25 of unpaid fine or one hundred 8-hour days, whichever is shorter. An offender ordered to perform community service work pursuant to this subparagraph is given credit toward the payment of the fine for each 8-hour day of community service work performed at the rate specified in the court's order. The offender is also given credit toward the payment of the fine for each day that the offender is detained as a result of an arrest warrant issued pursuant to this section at a rate specified in the court's order that is not less than \$5 of unpaid fine per day of confinement. An offender is responsible for paying any fine remaining after receiving credit for any detention and for community service work performed. A default on the remaining fine is also governed by this section.

Sec. 12. 17-A MRSA §1326-A, as amended by PL 2009, c. 94, §3, is further amended to read:

§ 1326-A. Time and method of restitution

When restitution is authorized, and the offender is not committed to the Department of Corrections ~~or~~ and does not receive a sentence that includes a period of probation, the time and method of payment or of the performance of the services must be specified by the court and monetary compensation may be ordered paid to the office of the prosecuting attorney who is prosecuting the case or to the clerk of the court. If the offender is committed to the Department of Corrections or receives a sentence that includes a period of probation, monetary compensation must be paid to the Department of Corrections and the time and method of payment must be determined by the Department of Corrections during the term of commitment or the period of probation. Once any term of commitment to the Department of Corrections or period of probation is completed and if the restitution ordered has not been paid in full, the offender is subject to the provisions of section 1326-F and, in the event of a default, the provisions of section 1329; ~~including a specification by the court of the time and method of payment of monetary compensation upon a finding of excusable default.~~ The state agency receiving the restitution shall deposit any money received in the account maintained by the Treasurer of State for deposit of state agency funds, from which funds are daily transferred to an investment account and invested. Interest accrued on that money is the property of and accrues to the State for deposit in the General Fund. The agency receiving the restitution shall make the disbursement to the victim or other authorized claimant as soon as possible after the agency receives the money.

Sec. 13. 17-A MRSA §1326-B, sub-§1, as enacted by PL 1999, c. 469, §1, is amended to read:

1. When restitution is required of an offender who will not be commencing service of a period of institutional confinement, who does not receive a sentence that includes a period of probation and who is employed, the court shall, at the time of ordering restitution, enter a separate order for income withholding. When restitution is required of an offender who receives a sentence that includes a period of probation and who is employed, upon application of the offender's probation officer, the court shall enter a separate order for income withholding. The withholding order must direct the employer to deduct from all income due and payable to the offender an amount ~~required by the court~~ determined pursuant to section 1326A to meet the offender's restitution obligation. The withholding order must include an instruction to the employer that upon receipt of a copy of the withholding order the employer shall:

- A. Immediately begin to withhold the offender's income when the offender is usually paid;
- B. Send each amount withheld to the agency to which restitution has been ordered to be paid at the address set forth in the order within 7 business days of the withholding; and
- C. Identify each amount sent to the agency by indicating the court's docket number.

Sec. 14. 17-A MRSA §1326-F is enacted to read:

§ 1326-F. Former Department of Corrections' clients owing restitution

An offender is responsible for paying any restitution outstanding at the time the term of commitment to the Department of Corrections or period of probation is completed. Monetary compensation must continue to be paid to the Department of Corrections and, unless otherwise modified by the court pursuant to section 1328A or 1329, the offender shall continue to comply with the time and method of payment determined by the Department of Corrections during the term of commitment or the period of probation.

Sec. 15. 17-A MRSA §1329, sub-§6 is enacted to read:

6. Payments ordered pursuant to this section must be made to the same agency to which the restitution was required to be paid under section 1326A or section 1326F.

SUMMARY

This bill amends the Maine Juvenile Code to specify that restitution for juvenile offenders is the same as restitution for adult offenders under the Maine Revised Statutes, Title 17A, chapter 54, except that section 1329, the restitution default provision, does not apply to juvenile offenders. Although section 1329 does not apply to juvenile offenders, enforcement of a restitution order imposed in a juvenile case is available pursuant to Title 15, section 3314, subsection 7, enforcement of a dispositional order.

The bill amends the Maine Juvenile Code to provide the court the authority to employ upon any default in payment of a fine or restitution the levying of execution or the taking of other measures authorized for the collection of unpaid civil judgments to collect the unpaid fine or restitution. A levy of execution does not affect confinement ordered as a punitive sanction and does not discharge a juvenile confined as a remedial sanction until the full amount of the fine or restitution has been paid. The amendment is modeled on Title 17A, section 1304, subsection 4 and Title 17A, section 1329, subsection 4.

The bill amends laws regarding dissemination of sexually explicit material and possession of sexually explicit material by clarifying that the age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.

The bill clarifies the law regarding the offense of aiding escape by striking the term "contraband" from the offense and replacing that term with the relevant portion of the current definition of "contraband."

The bill deletes from the law regarding the offense of trafficking in prison contraband the current reference to the definition of "contraband" in Title 17-A, section 756 and defines "contraband" in Title 17-A, section 757, subsection 2 using the relevant portion that is repealed in Title 17-A, section 756, subsection 2.

The bill enacts Title 17-A, section 1177 in chapter 48 of the Maine Criminal Code addressing victims' rights to provide notice to victims of the existence of Title 16, sections 53A, 53B and 53C, to clarify that certain communications by victims to sexual assault counselors, victim advocates, victim witness advocates or victim witness coordinators are privileged from disclosure.

The bill specifies that, in the context of dissemination of sexually explicit material, and possession of sexually explicit material for purposes of determining a period of probation, it is not the age of the person depicted at the time of the alleged dissemination or possession of the sexually explicit visual image

or material that the State must plead and prove, but rather the age of the victim at the time the sexually explicit conduct occurred.

The bill clarifies that if a court orders as a condition of probation that the convicted person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution as a sentencing alternative and no additional stand-alone order in this regard is necessary.

The bill gives the court where a warrant of arrest is executed the same authority to conduct the default hearing as the court located where the warrant is issued. The court where a warrant of arrest is executed may exercise its discretion as to whether to hold the hearing or instead return the offender to the issuing court for that purpose.

The bill clarifies the statutes concerning default by adding a reference to Title 17A, chapter 54C following the reference to "community service work."

The bill amends the provision regarding time and method of restitution to reflect the new Title 17A, section 1326F, which addresses restitution deducted from judgment in civil action, and Title 17A, section 1329, which addresses what happens when a defendant defaults in payment of restitution. The changes comprehensively address any offender who has completed any term of commitment to the Department of Corrections or any period of probation and still has not paid the restitution ordered by the court in full.

The bill amends the provision regarding income withholding orders to expressly allow probation officers to apply for income withholding orders when an offender owing restitution receives a sentence that includes a period of probation, making this provision consistent with the recent amendment to Title 17A, section 1326A, which leaves to the Department of Corrections the determination for probationers of the time and method of restitution payment.

The bill enacts a new section that comprehensively addresses the situation in which an offender who has completed the term of commitment to the Department of Corrections or the period of probation still has not paid the restitution ordered by the court in full. It provides notice to former Department of Corrections' clients still owing restitution that the duty to pay remains; requires that monetary compensation continue to be paid to the Department of Corrections; and requires that, unless otherwise modified by the court, the time and method of payment determined by the Department of Corrections during the former term of commitment or period of probation continues to control.

The bill amends the statutes concerning default to ensure that restitution payments are made to the same agency to which the restitution was required to be paid under Title 17-A, section 1326A or 1326F.